

INTERSTATE WATER MARKETING

Colorado River Water Conservation District Policy Statement:

The Colorado River Water Conservation District opposes any proposal to market Colorado River water between the states of the Upper Colorado River Basin and Lower Colorado River Basin without the unanimous consent of all seven states or between states of the Upper Colorado River Basin without similar, unanimous consent of the Upper Basin states.

Background:

The State of Colorado is signatory to the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact. The 1922 and 1948 compacts, along with the 1944 International Treaty with Mexico, a number of other federal laws, and United States Supreme Court decisions comprise the “Law of the River.” The diversion of Colorado River water for consumptive beneficial uses within the State of Colorado is subject to, and limited by, provisions of the Law of the River.

The Colorado River Compacts of 1922 and 1948 protect Colorado from downstream states claiming prior (senior) use that would preclude Colorado’s eventual development of its full entitlement. Accordingly, the compacts must be protected and defended from legal challenge or amendment unless all seven basin states agree to the terms of a proposed change. Any non-consensual proposal to market water between basins may represent an abrogation of the 1922 Compact.

The primary purposes of both compacts are to provide legal certainty regarding how much water each state can develop, to allow states to develop their water resources when the water is needed, and to preclude the interstate application of the prior appropriation doctrine. These, and other, benefits of the compacts outweigh any short-term benefit that may accrue to one state from interstate marketing of its compact-allocated water.

Periodically, individuals have proposed water development projects in Colorado that would provide water to lower basin states permanently or for a defined period of time. The most recent was the proposed Roan Creek Project. This project, to be located near DeBeque, proposed to perfect Chevron Oil’s conditional water rights intended for oil shale production and lease the water to Las Vegas for 50 years or until such time as Chevron required the water for local use.

Additionally, Utah has historically proposed selling a portion of its compact entitlement to lower basin interests through a binding commitment to forego development of a specified portion of its entitlement, in essence transferring a portion of its entitlement for lower basin states to develop.

Under most interpretations of the compacts, the Upper Basin states do not have a clearly quantified allocation. Therefore, one Upper Basin state selling a portion of its unquantified entitlement is problematic, at best. At worst, it introduces Lower Basin interests into any eventual resolution of ambiguities in the 1948 Upper Basin Compact and changes allegiances within the Upper Basin when negotiating ambiguities in the 1922 Compact.

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